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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1946**

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# No. 252

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J. D. JOHNSON,

*Petitioner,*

*vs.*

BRUCE GRAHAM, TRUSTEE OF GREENE COUNTY, TENNESSEE; GREENE COUNTY, TENNESSEE, AND GEORGE F. McCANLESS, COMMISSIONER OF FINANCE AND TAXATION OF THE STATE OF TENNESSEE.

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE AND BRIEF IN SUPPORT THEREOF.

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*To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

J. D. Johnson respectfully petitions that a Writ of Certiorari issue to review the judgment entered against him on March 2nd, 1946, by the Supreme Court of the State of Tennessee, which affirmed a judgment against petitioner, of the Circuit Court of Greene County, Tennessee.

## Summary of the Matters Involved

This suit by petitioner, a citizen and resident of Greene County, Tennessee, was instituted in a Magistrate's Court against respondents who are the tax collecting officials of said County and State.

The cause involves the validity of the poll tax collected from petitioner by respondents and paid by petitioner under protest as a condition precedent to his suit in the Courts of Tennessee.

The Constitution of Tennessee provides for the payment of a poll tax by male citizens and reads as follows:

> "All property real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the state, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer, and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value, but the legislature shall have power to tax merchants, peddlers and privileges, in such manner as they may from time to time direct. The portion of a merchant's capital used in the purchase of merchandise sold by him to nonresidents and sent beyond the state, shall not be taxed at a rate higher than the ad valorem tax on property. The legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem. All male citizens of this state over the age of twenty-one years, except such persons as may be exempted by law

on account of age or other infirmity shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the state."

ARTICLE II, SECTION 28, TENNESSEE CONSTITUTION

It also provides that the payment of this tax shall be paid as a pre-requisite to voting:

"Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this state, for twelve months, and of the county wherein he may offer his vote for six months, next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers of the county or district in which he resides; and there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him, for such preceding period as the legislature shall prescribe, and at such time as may be prescribed by law; without which his vote cannot be received. And all male citizens of the state shall be subject to the payment of poll taxes and to the performance of military duty, within such ages as may be prescribed by law. The general assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box."

ARTICLE IV, SECTION I, TENNESSEE CONSTITUTION

Long prior to 1943 the legislature of Tennessee carried into effect these poll tax provisions by appropriate legislation—levying the tax and providing that voters present evidence of this tax payment to vote in popular elections.

In 1943 the General Assembly of Tennessee, by Chapter 27 of the Public Acts of 1943, repealed Sections 1082, 1558

and 1559 of the Code of Tennessee or in effect repealed the poll tax, both as a tax levy and its payment as a prerequisite to voting.

The Supreme Court of Tennessee subsequently declared the repeal of this tax void, from which two of the Court's five Justices dissented, held the tax still to be collectible from petitioner and other citizens of Tennessee, in spite of legislative repeal.

*Biggs* v. *Beeler,* 173 S. W. (2nd) 145.

The petitioner grounded his suit on the contention that the tax was originally levied by the legislative branch of the government of Tennessee, which has the sole taxing power; that having levied this tax it could likewise repeal it, and that its enforced collection subsequent to such repeal is invalid; and in violation of his rights under the Constitution of the United States; that petitioner having paid the tax under protest is entitled to recover it. The trial magistrate gave judgment in favor of the petitioner. The Circuit Court of Greene County dismissed petitioner's suit, and upon appeal to the Supreme Court of Tennessee, the judgment of the Circuit Court was affirmed in a judgment of March 2nd, 1946.

## Jurisdictional Statement

Jurisdiction is invoked under Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. A., 344-b.

## Question Presented

The several questions presented in the Courts below and presented here for decision, are as follows:

I

Is the collection of the poll tax and penalty from petitioner invalid under Section I, Amendment Fourteen of

the Constitution of the United States, the tax having been repealed by the General Assembly of Tennessee?

II

Is the collection of the poll tax from petitioner—which must be paid by him before he can vote—in violation of Article V of the Constitution of the United States?

III

Is the collection of the poll tax from petitioner over his protest a tax upon his right to vote as a citizen of the United States under the provisions of both the Constitution of Tennessee and the Constitution of the United States?

**Reasons Relied On for Allowance of the Writ**

1. The right of the Tax Collecting authorities in Tennessee to continue to collect this tax after the repeal of its levy presents an issue very seriously concerning petitioner's rights under the Constitution of the United States. The taxing power being wholly legislative, does the State Supreme Court of Tennessee have a right on any constitutional ground to deny petitioner's right to be taxed, or not to be taxed by his duly elected representative.

2. Does the act of the Tax Collecting authorities in Tennessee in collecting this tax after its repeal violate the 1st Section (Due Process Clause) of the Fourteenth Amendment of the Constitution of the United States, and is such act "Taxation Without Representation?"

3. Since by Article IV, Section 4 of the Constitution of the United States, and by Article I, Section I, of the Tennessee Constitution, petitioner is guaranteed all rights under a Republican form of government, and the Tennessee Constitution in Article II guarantees strict separation of

powers of the co-ordinate branches of government does not the decision of the Supreme Court of Tennessee in *Biggs* v. *Beeler, supra,* violate the Federal guarantees of a Republican form of Government?

4. Does not the collection of said poll tax as a condition precedent to voting violate petitioner's right as well as the rights of many thousand of Tennessee to exercise their right of suffrage?

These questions affect thousands of Tennesseeans in their direct relations with the government of the United States since their rights and privileges of suffrage are abridged and violated by the poll tax evil.

If by former decisions of this Court determination of these matters has been held to be not justiciable but a function of the Congress of the United States, this Court of last resort should make a thorough examination into such decisions and determine their validity and reason for being.

The intervention of this Court is to practical purpose and interests invited by the dissenting opinion of two of the five Justices of the Supreme Court in the case of *Beeler* v. *Biggs,* as reported in 173 S. W. (2nd) 144.

In that opinion Chief Justice Greene said:

> "In perpetuating the poll tax sections of the Code after they were repealed by the Legislature, I fear that the Court was too little mindful of Article II of our Constitution which divides the powers of government into three distinct departments, the legislative, executive and judicial, and adds that—
>
> " 'No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.' "

and in another dissent, Mr. Justice Neil said:

> "We are here faced with the incongruity, if not absolute absurdity, of being called upon to yield obedience, and compel obedience, to a statute that has been repealed and a constitutional provision that is admittedly not self-executing. Such a thing is unknown to the history of English and American jurisprudence."

If as these two Justices testify the tax is collected from petitioner against his legislative consent, why then is he not being taxed without representation and in violation of the Due Process Clause?

There is a final reason for this review. It is historical. The underlying and basic philosophy of the Government of the United States is a Sovereign State based upon the will of free people. The sole expression of that will is by means of a free ballot. When that ballot is taxed it is not free.

## Conclusion

Wherefore, it is respectfully submitted that this petition for a Writ of Certiorari to review the judgment of the Supreme Court of Tennessee should be granted.

JOHN R. NEAL,
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JOHN A. ARMSTRONG,
JOHN W. KILGO,
*Greeneville, Tennessee,*
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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1946**

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# No. 252

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J. D. JOHNSON,

*Petitioner,*

*vs.*

BRUCE GRAHAM, TRUSTEE OF GREENE COUNTY, TENNESSEE; GREENE COUNTY, TENNESSEE, ET AL.

---

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE AND BRIEF IN SUPPORT THEREOF.

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### Opinion of the Court Below

The opinion of the Supreme Court of Tennessee appears in the record at page 41, and is reported in S. W. (2nd) p. 41.

### Jurisdictional Statement

This cause was instituted by J. D. Johnson, hereinafter referred to as petitioner, against Bruce Graham, Trustee of Greene County, Tennessee, and George F. McCanless,

Commissioner of Finance and Taxation of Tennessee. By amendment Greene County is also a party defendant. This suit is based on the claim of petitioner that the tax of $2.00 collected by the Trustee of Greene County from him, known as the Poll tax, is unconstitutional and void.

Petitioner paid this poll tax at the time he paid his land tax, as evidenced by his tax receipt.

**Exhibit I, to the Record**

At the time of this payment the tax was delinquent and a penalty of one (.01¢) cent had accrued.

The suit first tried by J. E. Sentelle, Justice of the Peace, was decided in favor of petitioner (R. 6) from which decision it was appealed to the Circuit Court of Greene County where the Court decided that the "Poll Tax is constitutional" and from that Court the case was heard on appeal by The Supreme Court of Tennessee.

The Supreme Court decided also against the petitioner.

**Errors Below, Relied upon Here**

**Summary of Argument**

1. The Supreme Court of Tennessee Erred in holding that the question whether the poll tax collected from petitioner is violative of the Constitution of the United States, was not before it in this cause.

2. The Supreme Court of Tennessee erred in failing to hold that the Poll Tax collected from petitioner is in violation of Section I, Amendment Fourteen of the Constitution of the United States.

3. The Supreme Court erred in dismissing petitioner's action and in holding the poll tax collected from petitioner

valid because said tax is a tax upon his rights to vote as a citizen of the United States for the following reasons:

1. Under the provisions of both Federal and Tennessee Constitutions petitioner has the privilege of suffrage without qualification.

2. The right to vote is a function exercised by petitioner as a citizen of the United States which is not subject to taxation.

## Argument

### Point One

The Supreme Court of Tennessee erred in holding that the question whether the poll tax collected from petitioner is violative of the United States was not before it in this case.

The Circuit Court of Greene County decided "The Supreme Court of Tennessee has declared unconstitutional the legislative enactments which undertook to outlaw the poll tax in Tennessee and that left the law requiring the poll tax as a pre-requisite for voting still in force and effect, and this law so requiring was held constitutional by the Supreme Court of the United States."

Thus the issue of poll tax validity was presented squarely to the Supreme Court of Tennessee and it is so presented here by the lower Court's decision. It is true that the tax collected from petitioner was probably not required for any specific election, but by Section 1927 of the Code of Tennessee, of which this Court has judicial notice, had there been any special election called during the year 1945 this tax paid by petitioner would have been a pre-requisite to his voting. It cannot be said that some poll taxes entitle petitioner to bring such suit as this while others do not. Therefore, this question remains, "Is the poll tax as a pre-

requisite to voting valid under the United States Constitution."

## Point II

The Supreme Court of Tennessee erred in failing to hold that the poll tax collected from petitioner is in violation of Section I, Amendment Fourteen of the Constitution of the United States.

The freedom of the thirteen original colonies of the United States was won on the principle of "No taxation without representation."

> "Taxation without representation or without the consent in some form of those who are to be taxed is vicious in principle and contrary to the fundamental principles of good government",
>
> *St. Paul Trust & Savings Bank* v. *American Clearing Co.*, 291 Fed. 212.

Petitioner urges that the collection of tax which has been repealed by the legislature would not be due process of law since the levying of taxes is strictly a legislative function.

> "The taxing power of the state, is exclusively a legislative function, and taxation can be imposed only in pursuance of legislative authority."
>
> 61 *C. J.*, p. 81.

Petitioner contends that a legislative repeal of any tax cannot under this principle be set aside by the Court, such as the Supreme Court of Tennessee undertook to do in its decision of *Beeler* v. *Biggs, supra.*

## Point III

The Supreme Court of Tennessee erred in dismissing petitioner's action and in holding the poll tax collected from petitioner valid because said tax is a tax upon his right to

vote as a citizen of the United States for the following reasons:

1. Under the provisions of both Federal and Tennessee Constitutions petitioner has the privilege of suffrage without qualification.

2. The right to vote is a function exercised by petitioner as a citizen of the United States which is not subject to taxation.

Under Section 2, Article I of the United States Constitution:

> "The house of representatives shall be composed of members chosen every second year by the people of the several states."

The election of members of the National representatives being a people's function is extended in the State of Tennessee to all her people, "without a qualification,"

ARTICLE I, SECTION 5, CONSTITUTION OF TENNESSEE

Every citizen of Tennessee thus having the right of suffrage without qualification under both the United States Constitution and the Constitution of Tennessee should enjoy this right without the penalty of a poll tax.

2. It is the contention of petitioner that the lower Courts in this case were in error under Article IV, section 4 of the Constitution of the United States.

The Tennessee Constitution itself guarantees a Republican form of government. The first Section of Article I provides for such a form of government and in a Republican form of government the powers thereof are conferred upon the three co-ordinate branches of government, and Article II, Section I of Tennessee's Constitution commands the strict separation of powers.

Judge Greene, Tennessee's Supreme Court Justice, said in dissenting from the case of *Biggs* v. *Beeler:*

> "In perpetuating the poll tax section of the Code after they were repealed by the Legislature, I fear that the Court (Supreme) was too little mindful of Article II of our Constitution which divides the powers of government into three distinct departments, the legislative, executive and judicial" and adds that—
>
> " 'No person or persons belonging to one of these departments shall exercise any of the powers probably belonging to either of the others, except in the cases herein directed or permitted.' "

But in addition to these contentions is the potent fact that all Federal elective officials derive their powers from election, or votes of the people. Therefore, a tax on voting is a tax on a Federal function by the States which impose it.

## Conclusion

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Supreme Court of Tennessee should be granted.

JOHN A. ARMSTRONG,
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